

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF TENNESSEE**  
**AT CHATTANOOGA**

**FILED**

2012 APR 18 A 8:10

U.S. DISTRICT COURT  
EASTERN DISTRICT OF TENN.

BY \_\_\_\_\_ DEPT. CLERK

**CITIZENS TRI-COUNTY BANK,**

**Plaintiff,**

**vs.**

**SCOTTSDALE INSURANCE COMPANY,**

**Defendant.**

No. 1:12-cv-0126  
**JURY DEMANDED**

CLC/SKL

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**COMPLAINT**

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COMES NOW the Plaintiff CITIZENS TRI-COUNTY BANK by and through its attorneys of record who would hereby bring this cause of action against the Defendant SCOTTSDALE INSURANCE COMPANY for damages for the total loss of a building in the amount of two hundred thousand ninety-two dollars and thirty-three cents (\$200,092.33) plus accrued interest at the rate of 6.95% per annum. In support of this Complaint, the Plaintiff would respectfully show unto the Court as follows:

**Jurisdiction and Venue**

1. The Plaintiff is a banking corporation chartered under the laws of the State of Tennessee with its principal place of business being located at 15699 Rankin Ave., Dunlap, Sequatchie County, Tennessee. It also owns a branch office located along Highway 108, Palmer, Grundy County, Tennessee;

2. That, upon information and belief, the Defendant is an insurance company

authorized to conduct business within the State of Tennessee with its principal place of business being located at 8877 North Gainey Center Drive, Scottsdale, Arizona 85258;

3. That the building which is the subject of this action was located at 10537 U.S. Highway 41, Monteagle, Grundy County, Tennessee;

4. That jurisdiction and venue for this action properly lies in this court pursuant to 28 U.S.C. §1391 and 28 U.S.C. §1392;

### **Facts**

5. That on or about April 10, 2009, the Plaintiff loaned the principal amount of \$201,293.58 to Stacey L. Nunley and Deborah K. Nunley (hereinafter referred to as the "Customers". The promissory note associated with said loan provided that the Customers would pay interest on the principal amount at the rate of 6.950% per annum. Said loan was secured by a lien against the subject building and real estate by virtue of a Deed of Trust which was recorded in Book 1015 Page 36 *et seq* ROGCT;

6. That the Customers obtained a policy of insurance from the Defendant which provided fire loss coverage for the building located on the subject real estate. Upon information and belief, the number of the policy issued to the Customers was CPS1293514. Upon further information and belief, the Plaintiff was also covered as a loss payee under the policy's mortgagee clause;

7. That on or about May 18, 2011, a fire occurred in the building that was located on the subject real estate and said building was covered by the policy referenced above. Upon information and belief, said fire resulted in the total loss of the building which is the subject of this action;

8. That at the time that the building was destroyed by fire, the principal balance of

the loan which the Customers owed to the Plaintiff was \$200,092.33;

9. That on or about August 18, 2011, the Plaintiff notified the Defendant of its claim via a written notice;

10. On or about October 4, 2011, the Plaintiff submitted various documents in support of its claim pursuant to the request of the Defendant's representative;

11. That as of the filing of this action, the Defendant has refused to honor the Plaintiff's claim to pay for the total loss of the subject building;

12. That there is a dispute between the Plaintiff and the Defendant as to whether the building at issue constitutes a total loss as that term is defined by Tennessee law;

#### **Cause of Action**

13. That the Plaintiff is a recognized and intended third-party beneficiary under the terms of the insurance policy which the Defendant issued to the Customers;

14. That the Plaintiff has sustained a financial loss due to the loss of the building which served as collateral for its loan to the Customers;

15. That the Defendant has breached its contractual duty to pay the losses sustained by the Plaintiff when it has refused to recognize that the May 18, 2011, fire resulted in the building being a total loss; and

16. That the Plaintiff is entitled to damages in the principal amount of \$200,092.33 plus accrued interest at the rate of 6.95% per annum.

WHEREFORE, ALL PREMISES CONSIDERED, the Plaintiff respectfully prays for the following relief:

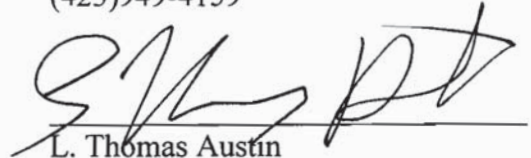
a) That it be allowed to bring this action and that proper process be issued and served upon the Defendant requiring it to appear and answer within the time allowed by law;



- b) That at the trial of this matter, the Plaintiff be awarded a judgment against the Defendant in the amount of \$200,092.33 plus accrued interest at the rate of 6.95% per annum;
- c) That pursuant to Rule 38 of the *Federal Rules of Civil Procedure*, a jury of twelve persons be sworn to try the issues when joined; and
- d) That the Plaintiff be awarded all other relief to which it may otherwise be entitled.

Respectfully submitted,

AUSTIN, DAVIS & MITCHELL  
P.O. Box 666  
Dunlap, TN 37327  
(423)949-4159



L. Thomas Austin  
*Attorney for Plaintiff*  
austinlaw@bledsoe.net



M. Keith Davis  
*Attorney for Plaintiff*  
mkdavis@bledsoe.net

**Cost Bond**

I, the undersigned, hereby acknowledge myself as the surety for the reasonable costs of this cause.

